



## REQUEST FOR CONFIDENTIAL TREATMENT

February 13, 2015

### **VIA IBFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, D.C. 20554

Re: IBFS File No. SAT-MOD-20141022-00113

Dear Ms. Dortch:

Pursuant to Section 0.459(d) of the Commission's rules and Section 552(b)(4) of the Freedom of Information Act ("FOIA"),<sup>1</sup> EchoStar Satellite Operating Corporation ("EchoStar") hereby submits this request for confidentiality for its supplement to File No. SAT-MOD-20141022-00113 ("Supplement"). This Supplement contains confidential information regarding the health of the EchoStar III satellite.

EchoStar submits the following in support of its request for confidential treatment:

The Supplement contains highly proprietary business information, and EchoStar would suffer serious competitive harm if competitors were accorded full access to the information. Consistent with Commission rules and precedent, the competitively sensitive business information contained in the Supplement is exempt from public disclosure.

Such competitively sensitive information is exempt from mandatory disclosure under Exemption 4 of FOIA<sup>2</sup> and Section 0.457(d) of the Commission's rules.<sup>3</sup> Exemption 4 allows the withholding of commercial or financial information that is privileged or confidential.<sup>4</sup> The

---

<sup>1</sup> 47 C.F.R. § 0.459; 5 U.S.C. § 552(b)(4).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

<sup>3</sup> 47 C.F.R. § 0.457(d). See *National Parks and Conservation Ass'n. v. Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974) ("National Parks"); *Southern Company Request for Waiver of Section 90.629 of the Commission's Rules*, 14 FCC Rcd 1851, 1860 (IB 1998) ("Southern Company").

<sup>4</sup> 5 U.S.C. § 552(b)(4).

confidentiality requirement is satisfied if substantial competitive injury would likely result from disclosure.<sup>5</sup>

The Supplement contains information regarding the health of the EchoStar III satellite. The information provided in the Supplement typically would not be disclosed to the public, as the full details of the health of a satellite are closely guarded from competitors. EchoStar takes steps to safeguard such confidential information from public disclosure,<sup>6</sup> thus more than satisfying the Exemption 4 standard for nondisclosure<sup>7</sup> as well as the criteria set forth in Section 0.459(b) of the Commission's rules.<sup>8</sup>

The Commission has recognized that it is obligated to ensure that in the exercise of its duties, it does not unnecessarily disclose information that might place a regulated entity at a competitive disadvantage.<sup>9</sup> In this instance, the risk of competitive harm is clear. The Supplement reveals information concerning the health of EchoStar III. Unrestricted disclosure of this information to competitors would allow them to leverage that information for their own gain.

The Commission has recognized that these types of risks justify protecting technical information from unrestricted disclosure.<sup>10</sup> Similarly, the Commission has found that competitive harm could result from unrestricted release of information relating to a satellite licensee's market plans and business strategies.<sup>11</sup>

Accordingly, EchoStar requests that the Supplement be withheld indefinitely from public inspection. Grant of this request will further the Commission's ability to obtain this type of voluntarily disclosed information in the future.<sup>12</sup> In the event that any person or entity requests

---

<sup>5</sup> *Public Citizen Research Group v. FDA*, 704 F.2d 1280, 1290-91 (D.C. Cir. 1983) ("*Public Citizen*").

<sup>6</sup> See *National Parks*, 498 F.2d at 770; *Southern Company*, 14 FCC Rcd at 1860.

<sup>7</sup> See *Public Citizen*, 704 F.2d at 1290-91.

<sup>8</sup> 47 C.F.R. § 0.459(b).

<sup>9</sup> See, e.g., *Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission*, 13 FCC Rcd 24816, 24822 (1998).

<sup>10</sup> See, e.g., *Mercury PCS II, LLC*, FCC 00-241, FOIA Control No. 98-95, ¶ 4 (2000) (documents revealing submitter's overall business strategy should not be disclosed because disclosure could adversely affect company's competitive position and ability to implement its business plan).

<sup>11</sup> See, e.g., *Orion Satellite Corp.*, 54 RR2d 1315, 1317 (1983) (information regarding Intelsat's future plans and business strategies withheld under Exemption 4); *Satellite Business Systems*, 54 RR2d 336, 339 (1983) (denying disclosure of licensee's satellite transponder use forecasts because it would permit competitors to better assess the licensee's capabilities and to prepare their own market strategies); *M/A-COM, Inc.*, 55 RR2d 641, 644 (1984) (denying FOIA request for access to information regarding Intelsat's technical and strategic business concerns because "such information could prove very useful to a competitor").

<sup>12</sup> See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 878 (D.C. Cir. 1992) ("Where, however, the information is provided to the Government voluntarily, the presumption is that [the Government's]

disclosure of the Supplement, EchoStar requests that it be so notified immediately so it can oppose the request or take any other action to safeguard its interests.

Respectfully submitted,

/s/ Jesse T. Jachman

Jesse T. Jachman  
EchoStar Satellite Operating Corporation  
Senior Counsel, Regulatory Affairs  
11717 Exploration Lane  
Germantown, MD 20876  
(301)428-5975

Enclosures

cc: Kathryn Medley (FCC)  
Stephen Duall (FCC)

---

interest will be threatened by disclosure as the persons whose confidences have been betrayed will, in all likelihood, refuse further cooperation.”).